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12 ATTORNEYS FOR PLAINTIFFS, CARPENTERS SOUTHWEST  
13 ADMINISTRATIVE CORPORATION and BOARD OF TRUSTEES  
14 FOR THE CARPENTERS SOUTHWEST TRUSTS

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16  
17 UNITED STATES DISTRICT COURT  
18 CENTRAL DISTRICT OF CALIFORNIA  
19  
20 WESTERN DIVISION

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22  
23 CARPENTERS SOUTHWEST  
24 ADMINISTRATIVE CORPORATION, }  
25 a California non-profit corporation; and  
26 BOARD OF TRUSTEES FOR THE  
27 CARPENTERS SOUTHWEST TRUSTS,

28 Plaintiffs,

29 v.  
30 EVERLAST BUILDERS, INC., a  
31 California corporation; VASILIS  
32 ANDREA TSANGARIDES, an  
33 individual; and DOES 1 through 10,  
34 inclusive,

35 Defendants.

36 CASE NO.

37 COMPLAINT FOR:

1. DAMAGES FOR FAILURE TO  
2. DEFALCATION OF  
3. PAY FRINGE BENEFIT  
4. FIDUCIARY BY THE  
5. CONTRIBUTIONS AS TO  
6. MISAPPROPRIATION OF  
7. EVERLAST BUILDERS, INC.;  
8. VACATION FUNDS HELD AS  
9. TO VASILIS ANDREA  
10. TSANGARIDES

11  
12 JURISDICTION

13 1. This is a civil action to recover fringe benefit contributions, and for  
14 defalcation of fiduciaries. This action arises and jurisdiction of the court is founded  
15 in section 301 of the Labor-Management Relations Act of 1947, as amended  
16 ("LMRA"), 29 U.S.C. § 185a, and sections 502 and 515 of the Employee Retirement  
17 Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1132 and 1145.

**FIRST CLAIM FOR RELIEF**  
**(DAMAGES FOR FAILURE TO PAY FRINGE BENEFIT**  
**CONTRIBUTIONS AS TO EVERLAST BUILDERS,**  
**INC.; and DOES 1 THROUGH 5)**

## **PARTIES AND OTHERS**

6       2.     CARPENTERS SOUTHWEST ADMINISTRATIVE CORPORATION, a  
7 California non-profit corporation ("CSAC") is a non-profit corporation duly  
8 organized and existing under and by virtue of the laws of the State of California.  
9 CSAC's principal place of business is in the County of Los Angeles, State of  
10 California.

11       3.     At all relevant times herein, the BOARD OF TRUSTEES FOR THE  
12 CARPENTERS SOUTHWEST TRUSTS were and now are fiduciaries and are duly  
13 authorized and acting trustees of those ERISA Trust Funds defined in paragraph six.

14 4. CSAC and BOARD OF TRUSTEES FOR THE CARPENTERS  
15 SOUTHWEST TRUSTS are also authorized agents to act on behalf of the remaining  
16 Funds and entities (defined in paragraph nine) with respect to these delinquencies.  
17 CSAC and BOARD OF TRUSTEES FOR THE CARPENTERS SOUTHWEST  
18 TRUSTS are sometimes collectively referred to as PLAINTIFFS.

19 5. The true names and capacities, whether individual, corporate, associate, or  
20 otherwise, of defendants named herein as DOES 1 through 10, are unknown to  
21 PLAINTIFFS, who therefore sue the defendants by such fictitious names, and  
22 PLAINTIFFS will amend this complaint to show their true names and capacities  
23 when they have been ascertained.

24 6. At all relevant times, Southwest Carpenters Health and Welfare Trust,  
25 Southwest Carpenters Pension Trust, Southwest Carpenters Vacation Trust, and  
26 Southwest Carpenters Training Fund, were and are express trusts which exist  
27 pursuant to section 302 of the LMRA, 29 U.S.C. §186, and multiemployer plans  
28 within the meaning of section 3 of ERISA, 29 U.S.C. §1002.

1       7. At all relevant times, the Construction Industry Advancement Fund of  
2 Southern California, the Residential Housing Contract Administration Trust Fund,  
3 the Contractors-Carpenters Grievance and Arbitration Trust, and the Contract  
4 Administration Trust for Carpenter-Management Relations, were and are express  
5 trusts which exist pursuant to section 302 of the LMRA, 29 U.S.C. §186.

6       8. At all relevant times, the Carpenters-Contractors Cooperation Committee  
7 ("CCCC"), and Western States Drywall/Lathing Industry Labor-Management  
8 Cooperation Committee, Inc., were and are non-profit California corporations which  
9 exist pursuant to section 5(b) of the Labor Management Cooperation Act of 1978,  
10 92 Stat. 2020 (1978), for the purposes set forth in section 302(c)(9) of LMRA, 29  
11 U.S.C. § 186(c)(9).

12       9. CSAC is the administrator of Southwest Carpenters Health and Welfare  
13 Trust, Southwest Carpenters Pension Trust, Southwest Carpenters Vacation Trust,  
14 and Southwest Carpenters Training Fund, and assignee of the Construction Industry  
15 Advancement Fund of Southern California, the Residential Housing Contract  
16 Administration Trust Fund, the Contractors-Carpenters Grievance and Arbitration  
17 Trust, the Contract Administration Trust for Carpenter-Management Relations, the  
18 Carpenters-Contractors Cooperation Committee, and the Southern California  
19 Drywall Industry Fund, the Western States Drywall/Lathing Industry Labor-  
20 Management Cooperation Committee, Inc., and the Grievance Obligation Trust  
21 Fund (collectively, the "PLANS"), and, as such, is a plan fiduciary within the  
22 meaning of section 3 of ERISA, 29 U.S.C. §1002.

23       10. The duly authorized and acting trustees or directors of each of the PLANS  
24 have also assigned to CSAC all their right, title and interest in and to any and all  
25 amounts due and owing to the respective PLANS by the employer as herein alleged.

26       11. Southwest Regional Council of Carpenters and its affiliated local unions  
27 ("UNIONS") affiliated with United Brotherhood of Carpenters and Joiners of  
28 America, are labor organizations that are parties to the collective bargaining

1 agreements involved.

2 12. At all relevant times, employer, EVERLAST BUILDERS, INC., a  
3 California corporation, and DOES 1 through 5, ("EMPLOYER") was and is a  
4 California corporation and contractor engaged in the construction industry within  
5 the jurisdiction of the relevant UNIONS.

6 13. At all relevant times, the following individuals, were and are officers of  
7 EMPLOYER, as follows: VASILIS ANDREA TSANGARIDES, Responsible  
8 Managing Officer, Chief Executive Officer and President; and DOES 6 through 10,  
9 ("INDIVIDUAL").

10 **OPERATIVE ALLEGATIONS**

11 14. On or about the date set forth thereon, EMPLOYER made, executed and  
12 delivered to the UNION, a Carpenters Memorandum Agreement dated March 18,  
13 2016 ("MEMORANDUM AGREEMENT"). A true and correct copy is attached  
14 hereto, marked as Exhibit "1" and incorporated herein by reference.

15 15. Paragraph 8(a) of the MEMORANDUM AGREEMENT provides as  
16 follows:

17 In order to protect and preserve, for the employees covered by  
18 this Agreement, all work heretofore performed by them, and in  
19 order to prevent any device or subterfuge to avoid the protection  
20 and preservation of such work, it is hereby agreed as follows: If  
21 and when the Contractor performs any on-site construction work  
22 of the type covered by this Agreement, under its own name or  
23 under the name of another, as a corporation, company,  
24 partnership, or any other business entity, including a joint  
25 venture, wherein the Contractor (including its officers, directors,  
26 owners, partners or stockholders) exercises either directly or  
27 indirectly (such as through family members) ownership,  
28 management or control, the terms and conditions of this

1                   Agreement will be applicable to all such work

2       16. The MEMORANDUM AGREEMENT binds EMPLOYER to the terms  
3 and conditions of the Master Labor Agreement between the United General  
4 Contractors Association, Inc. and the Southwest Regional Council of Carpenters  
5 and its affiliated Local Unions, United Brotherhood of Carpenters and Joiners of  
6 America, dated July 1, 2012, and any renewals or subsequent Master Labor  
7 Agreements, and the PLANS' agreements and any amendments, modifications,  
8 extensions, supplementations or renewals of the PLANS' agreements (collectively  
9 referred to as "AGREEMENTS"). The PLANS are third party beneficiaries of the  
10 MEMORANDUM AGREEMENT and Master Labor Agreements.

11     17. The AGREEMENTS require EMPLOYER to pay fringe benefit  
12 contributions at the rates set forth therein for every hour worked by employees  
13 performing services covered by the AGREEMENTS, and on account of all  
14 compensation paid to employees performing services covered by the  
15 AGREEMENTS.

16     18. The AGREEMENTS require EMPLOYER to make the fringe benefit  
17 contributions by way of Employers Monthly Reports ("REPORTS") to the PLANS  
18 at their place of business in Los Angeles, California, on or before the 25th day of  
19 each month following the month during which the hours for which contributions are  
20 due were worked or paid. Further, the AGREEMENTS specifically provide that the  
21 venue of an action to recover delinquent fringe benefit contributions shall be in the  
22 County of Los Angeles.

23     19. In acknowledging both that the regular and prompt payment of employer  
24 contributions is essential to the maintenance of the PLANS, and the extreme  
25 difficulty, if not impracticability, of fixing the actual expense and damage to the  
26 PLANS when such monthly contributions are not paid when due, the  
27 AGREEMENTS provide that the amount of contractual damages to the PLANS  
28 resulting from a failure to pay contributions when due shall be presumed to be the

1 sum of \$30.00 per delinquency or 10 percent of the amount of the contributions due,  
2 whichever is greater. This amount shall become due and payable to the CSAC as  
3 liquidated damages in addition to the unpaid contributions or contributions paid  
4 late.

5 20. EMPLOYER engaged workers who performed services covered by the  
6 AGREEMENTS and who performed labor on works of construction within the  
7 jurisdiction of the AGREEMENTS undertaken by EMPLOYER during the term of  
8 the AGREEMENTS.

9 21. EMPLOYER has failed to pay the fringe benefit contributions in the  
10 manner prescribed by the AGREEMENTS, and there is now due and owing the  
11 PLANS from EMPLOYER the amounts set forth in Exhibit "2".

12 22. The AGREEMENTS require EMPLOYER to pay for the expense of  
13 auditing EMPLOYER's business records if an audit by the PLANS indicates that  
14 EMPLOYER failed to report and pay all contributions. A true and correct copy of  
15 Audit Invoice 21425, and Audit Invoice C9379 (with social security numbers  
16 redacted) is attached as Exhibit "3".

17 23. As a result of the failure to pay fringe benefit contributions in the manner  
18 prescribed by the AGREEMENTS, EMPLOYER is liable for interest on the  
19 contributions from the first of the month following the date due, at the rate  
20 prescribed by the AGREEMENTS.

21 24. As a result of the failure to pay fringe benefit contributions in the manner  
22 prescribed by the AGREEMENTS, EMPLOYER is liable for an amount equal to the  
23 greater of interest on the unpaid contributions as prescribed by section 6621 of the  
24 Internal Revenue Code of 1954, 26 U.S.C. §6621, or liquidated damages provided  
25 for under the AGREEMENTS.

26 25. It has been necessary for PLAINTIFFS to engage counsel to bring this  
27 action to recover the delinquent fringe benefit contributions. Pursuant to the  
28 AGREEMENTS and section 502(g)(2) of ERISA, 29 U.S.C. §1132(g)(2),

1 EMPLOYER is liable for reasonable attorneys' fees incurred in litigating this  
2 matter.

3 26. The PLANS have complied with all conditions precedent.

4 27. CSAC has, concurrently with the filing of this complaint, served a copy of  
5 the same upon the Secretary of Labor and Secretary of the Treasury.

6 **SECOND CLAIM FOR RELIEF**

7 **(DEFALCATION OF FIDUCIARY BY THE MISAPPROPRIATION**

8 **OF VACATION FUNDS HELD IN FIDUCIARY CAPACITY**

9 **AS TO VASILIS ANDREA TSANGARIDES;**

10 **and DOES 6 THROUGH 10)**

11 28. PLAINTIFFS reallege and incorporate herein by reference each and every  
12 allegation contained in paragraphs 1 through 27 of their First Claim for Relief and  
13 allege a Second Claim for Relief against VASILIS ANDREA TSANGARIDES, an  
14 individual; and DOES 6 through 10 ("INDIVIDUAL") for Defalcation of Fiduciary  
15 by the Misappropriation of Vacation Funds Held in Fiduciary Capacity by  
16 EMPLOYER as follows:

17 29. The Vacation Plan (which includes the supplemental dues) was created by  
18 a collective bargaining agreement which consists of Trust Agreements and a Master  
19 Labor Agreement (collectively, "AGREEMENTS"), between the United General  
20 Contractors of California, Inc., the Building Industry Association of Southern  
21 California, Inc., the Engineering Contractors' Association, Inc., and the Southern  
22 California Contractors Association, Inc., on behalf of their respective eligible  
23 members, and the district councils affiliated with the United Brotherhood of  
24 Carpenters and Joiners of America.

25 30. The AGREEMENTS obligate EMPLOYER to include the amounts to be  
26 paid to the Vacation Plan in the individual employees taxable income and to submit  
27 the amount so deducted monthly to the Vacation Plan.

28 31. PLAINTIFFS are informed and believe, and, based on such information

1 and belief, allege that during the period of February 2014; October 2015; December  
2 2015; January 2016; March 2016; April 2016; and June 2016 through September  
3 2016, INDIVIDUAL withheld funds from EMPLOYER'S employees.

4 INDIVIDUAL failed to properly forward the withheld funds to the Vacation Plan,  
5 in an amount to be proven at trial. By acting in this manner, INDIVIDUAL  
6 exercised discretionary authority or control over the assets of the Vacation Plan and  
7 were thus a fiduciary.

8 32. PLAINTIFFS are informed and believe, and, based on such information  
9 and belief, allege that EMPLOYER was, and still is, justly and truly indebted to said  
10 Vacation Plan (as to contributions only) in an amount as set forth in Exhibit "4."

11 33. In assuming the obligations to ascertain and report contributions to the  
12 Vacation Plan, INDIVIDUAL entered into a fiduciary relationship with the  
13 Vacation Plan, and was thereby obligated to pay the Vacation plan all monies  
14 withheld from the employees' wages.

15 34. PLAINTIFFS are informed and believe, and, based on such information  
16 and belief, allege that by failing to segregate trust property, by misappropriating or  
17 failing to account for trust property and by failing to timely tender funds withheld  
18 from employees to the Vacation Plan, INDIVIDUAL breached his fiduciary  
19 obligation and thus engaged in defalcation.

20 35. At all times material herein, INDIVIDUAL is and was a fiduciary with  
21 respect to the PLANS within the meaning of Section 3(21)(A) of ERISA, 29 U.S.C.  
22 §1002(21)(A), because he exercised discretionary authority or control respecting  
23 management of disposition of assets of the PLANS.

24 36. By engaging in the acts and omissions described herein, INDIVIDUAL  
25 caused assets of the PLANS to inure to the benefit of an employer, namely  
26 EMPLOYER, and not to the benefit of participants in the PLANS and his  
27 beneficiaries and not for defraying reasonable expenses of the PLANS. These  
28 actions were in violation of Section 403(c)(1) of ERISA, 29 U.S.C. §1103(c)(1).

1 WHEREFORE, PLAINTIFFS pray for judgment as follows:

2 **FOR PLAINTIFFS' FIRST CLAIM FOR RELIEF**

3 **(DAMAGES FOR FAILURE TO PAY FRINGE BENEFIT**

4 **CONTRIBUTIONS AS TO AS TO EVERLAST BUILDERS, INC.;**

5 **and DOES 1 THROUGH 5);**

6 1. For unpaid contributions in the sum of \$96,546.25;

7 2. For interest and liquidated damages, as provided in the AGREEMENTS;

8 3. For audit costs;

9 4. For a statutory amount equal to the greater of the interest on unpaid

10 contributions which were owing as of the time of the filing of the complaint herein

11 (at the rate prescribed by law), or liquidated damages as provided in the

12 AGREEMENTS, in an amount to be determined.

13 **FOR PLAINTIFFS' SECOND CLAIM FOR RELIEF**

14 **(DEFALCATION OF FIDUCIARY BY THE MISAPPROPRIATION**

15 **OF VACATION FUNDS HELD IN FIDUCIARY CAPACITY**

16 **AS TO VASILIS ANDREA TSANGARIDES;**

17 **and DOES 6 THROUGH 10)**

18 1. That the court determine that INDIVIDUAL is liable for the funds withheld  
19 from employees for the Vacation Plan in the sum of \$22,913.52; and

20 2. That the court determine the remaining issues and render judgment for

21 PLAINTIFFS for the amount of this debt, plus interest as proven at trial.

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**AS TO ALL OF PLAINTIFFS' CLAIMS FOR RELIEF:**

1. For reasonable attorneys' fees;
2. For costs of this action;
3. For further contributions according to proof; and
4. For such other and further relief as the court deems

proper.

Dated: March 17, 2017

**DeCARLO & SHANLEY,  
a Professional Corporation**

By: Thomas Davis  
**THOMAS DAVIS**  
Attorneys for Plaintiffs,  
**CARPENTERS SOUTHWEST**  
**ADMINISTRATIVE CORPORATION**  
and **BOARD OF TRUSTEES FOR THE**  
**CARPENTERS SOUTHWEST TRUST**